SpencerFane

ANDREW BROUGHT
DIRECT DIAL: 816.292.8886
abrought@spencerfane.com

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VIA EMAIL AND U.S. FIRST CLASS MAIL

Dave Hensley
Physical Scientist
Chemical & Oil Release Prevention
Air & Waste Management Division
U.S. Environmental Protection Agency Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219
hensley.dave@epa.gov

RE: MGPI Processing, Inc.
Response to Notice of Preliminary Findings Dated January 26, 2017

Dear Mr. Hensley:

On January 26, 2017, the U.S. Environmental Protection Agency ("EPA") concluded a four-day onsite inspection of the MGPI Processing, Inc., facility in Atchison, Kansas. The inspection was triggered by the October 21, 2016, incident in which a Harcros Chemicals, Inc. ("Harcros") delivery trailer pumped 41,600 pounds of 30% sulfuric acid into a fixed storage tank containing a sodium hypochlorite solution.

This letter responds to the Notice of Preliminary Findings provided by the EPA to MGPI Processing at the end of the inspection. The company appreciates the opportunity to provide the enclosed information as a supplement to the information previously provided. In addition, this letter summarizes the immediate corrective action undertaken by the company, as necessary, in response to the preliminary findings.

For ease in understanding the company's response and the corrective action undertaken, EPA's preliminary findings are identified below in bold font, followed by the company's response.

EPA Preliminary Finding #1: 40 C.F.R. 68.65(c)(1)(iii) – Maximum intended inventory inconsistent + no piping

Response: The company does not believe a citation is warranted as the company's process safety information contained information regarding the maximum intended inventory, satisfying the regulatory requirement.

According to the regulation cited, the owner/operator of a covered process must maintain process safety information ("PSI") pertaining to the technology of the process, including the "maximum intended inventory." The company's PSI for the Propylene Oxide Bulk Tank and Day Tank reviewed by EPA at MGP-EPA000903 through MGP-EPA000906 contained maximum operating capacities of those two tanks at 63,980 lbs. and 7,500 lbs. respectively, for a total inventory identified in the company's process safety

information of 71,480 lbs. A total of 173 lbs. is contained in process piping, and although not historically included with the company's PSI, this is not a material deviation (*i.e.,* significantly less than one percent difference).[1] Simply put, the company's PSI satisfied the regulatory requirement of identifying the maximum inventory in the covered process.

Further, the company does not believe there is any meaningful inconsistency between what MGPI Processing reported on its RMP*eSubmit and its PSI. The company reported 72,000 lbs. which is a slightly more conservative estimate for purposes of the RMP submittal, but is completely consistent with the 71,653 lbs. of maximum inventory.

Notwithstanding the fact that no citation is appropriate, the company has amended its PSI to reflect the interplay of the maximum inventory in conjunction with its RMP*eSubmit (including the process piping). MGPI Processing is providing EPA a copy of the revised PSI, bates numbered MGP-EPA004238 to MGP-EPA004240. This revised PSI contains Confidential Business Information (CBI), and thus MGPI Processing is not enclosing it with this letter but rather is sending it directly to EPA Region 7's CBI Officer.

EPA Preliminary Finding #2: 40 C.F.R. 68.65(c)(1)(ii) – Process chemistry

Response: During the inspection, EPA inquired about the process chemistry for the reaction between the propylene oxide and starch. The company notes, however, that this reaction is not part of the RMP covered process. Consequently, there is no requirement for the company to maintain this information in its process safety information, and there was no deviation from the regulatory requirements that would support a citation for this issue.

The RMP covered process for propylene oxide includes the bulk tank, the piping to the day tank, and the day tank. All of this equipment and piping for the covered process is within the tank farm and the boundary for the RMP covered process is the tank farm. The RMP covered process does not include the mixing and reaction inside the Specialty Starch Building.

Even if the RMP covered process included the reactor mix tanks inside the Specialty Starch Operations building, the company notes (as EPA itself recognized) that such information can be readily obtained and collected as necessary. As a courtesy, the process chemistry is provided as follow:

[1] The piping segments between the propylene oxide day tank and the reactor mix tanks inside the Specialty Starch Operation Building are not part of the RMP covered process. Nevertheless, for purposes of calculating the maximum inventory, the company has considered the volume in these pipe segments in addition to the piping between the bulk tank and the day tank.

EPA Preliminary Finding #3: 40 C.F.R. 68.65(d)(2) – RAGAGEP missing for Mod B

Response: At the time of the inspection, the company made available to EPA information pertaining to the design codes and standards of the equipment in the process to ensure it complies with recognized and generally accepted good engineering practices ("RAGAGEP"). This information made available to EPA at the time of the inspection is summarized below.

Equipment	Design Code
Propylene Oxide Bulk Tank	ASME Code Sect. VIII, DIV. 1, 1986 ed *Ref: Letter from Shamrad Boiler Company, Inc., Dated Sep 28, 1988 and Form U-1A, Dated July 10, 1989.*
Propylene Oxide Day Tank	ASME Code Sect. VIII, DIV. 1, 1986 ed *Ref: Letter from Shamrad Boiler Company, Inc., Dated Sep 28, 1988.*
Transfer Pumps	Design specifications are available. *Ref: PSI Binder, Compiled by Lamb Group, LLC, January 2002.*
PRVs	Design specifications are available. *Ref: PSI Binder, Compiled by Lamb Group, LLC, January 2002.*

Following the inspection, the company consolidated this above information into a chart format and incorporated it into the company's PSM Written Plan at MGP-EPA004241 to MGP-EPA004242. Also following the inspection, the company supplemented its previous design code information and PSI RAGAGEP as follows:

Equipment	Design Code	
Pipe (Carbon Steel)	ASTM A1120, A53 Gr B	ASTM A1120, A53 Gr B
Fittings	ASTM A 47GR 32510	ASTM A234 WPB
Flanges	ASTM A181 GR 1	ASTM A181 GR 1 or A 105
Bolts & Nuts (Carbon Steel)	ASTM A 307 GR B, ANSI B1.1	ASTM A 307 GR B, ANSI B1.1

As further explained by the company during EPA's inspection, many months before the incident the company, through its outside legal counsel, retained a professional third-party engineering firm to conduct a review of certain elements of PSI as well as verify documentation among other tasks regarding compliance with EPA's Risk Management Plan requirements and OSHA's Process Safety Management requirements. In connection with the review being performed by Burns & McDonnell, the company will supplement the information it has already compiled demonstrating that the equipment complies with RAGAGEP.

In light of the codes and standards made available to the EPA during the inspection along with the information demonstrating a broader review already in progress at the time of the inspection, the company respectfully requests that EPA remove this item from the list of potential issues.

EPA Preliminary Finding #4: 40 C.F.R. 68.67(e) - No written schedule of when PHA findings were addressed

Response: As discussed in the inspection, the company was able to demonstrate that PHA findings were addressed timely. Enclosed with this response is a document identifying the written schedule of when actions were completed, bates numbered MGP-EPA004243 to MGP-EPA004246.

EPA Preliminary Finding #5: 40 C.F.R. 68.79(a) – Did not certify compliance with Subpart D of compliance audit

Response: The company does not believe a citation is warranted under the circumstances presented. The company last completed triennial audits to verify that the procedures and practices were in compliance with applicable requirements in 2015 and 2012. In particular, the company satisfied the 12 elements of the Program 3 Prevention Program in Subpart D in connection with the common elements set forth in OSHA's Process Safety Management Program at 29 CFR 1910.119. Notably, the company certified compliance with the OSHA PSM program elements in 2015 and 2012.

Common Element	EPA Citation 40 CFR	OSHA Citation 29 CFR	Certified
Process Safety Information	68.65	1910.119(d)	Yes
Process Hazard Analysis	68.67	1910.119(e)	Yes
Operating Procedures	68.69	1910.119(f)	Yes
Training	68.71	1910.119(g)	Yes
Mechanical Integrity	68.73	1910.119(j)	Yes
Management of Change	68.75	1910.119(l)	Yes
Pre-startup review	68.77	1910.119(i)	Yes
Compliance Audits	68.79	1910.119(o)	Yes
Incident Investigation	68.81	1910.119(m)	Yes
Employee Participation	68.83	1910.119(c)	Yes
Hot Work Permit	68.85	1910.119(k)	Yes
Contractors	68.87	1910.119(h)	Yes

The company does not dispute that a separate certification for the RMP prevention program elements was not completed at the time of the audits. In light of the nearly identical common elements, however, the company believes that the compliance certification provided with the compliance audits in 2015 and 2012 materially satisfied the requirement of 40 CFR 68.79(a). Further, recall that during EPA's on-site inspection when this issue was broached, the company provided documentation demonstrating that a compliance certification was completed before EPA's onsite inspection. An additional clarifying certification was provided on January 24 in response to comments from EPA. Please see the enclosed documents, bates numbered MGP-EPA004247, and MGP-EPA004266 to MGP-EPA004270.

EPA Preliminary Finding #6: 40 C.F.R. 68.79(d) – No compliance audit finding resolution documentation

Response: The company demonstrated to EPA during the inspection that findings from the compliance audits were resolved and the company had documentation that the deficiencies had been corrected. This is all that is required by the regulation and the company satisfied the obligation. Consequently, no citation is appropriate. Although the company did not have the documentation in one consolidated chart or one location, the company believes that the paperwork and information it did have at the time of the inspection "document[ed] that deficiencies have been corrected." The company fully agrees with EPA's recommendation that a consolidated list is a good housekeeping practice and the company has adopted such practice. Enclosed with this response is a consolidated list, bates numbered MGP-EPA004248 to MGP-EPA004249.

EPA Preliminary Finding #7: 40 C.F.R. 68.160(b)(6) – Error on RMP emergency contact telephone number

Response: The company had a minor typo listing one of the phone numbers as (913) 367-5444 when the appropriate number should have been listed as (913) 360-5444. All of the other information required by section 68.160(b)(6) was correct. As reflected in the enclosed documentation, the company corrected the clerical error on January 31, 2017 in RMP*eSubmit and certified the same on February 7, 2017. Please see the enclosed documentation at MGP-EPA004250 to MGP-EPA004251, MGP-EPA004252, and MGP-EPA004253 to MGP-EPA004263.

EPA Preliminary Finding #8: 40 C.F.R. 68.180 – RMP indicates [the facility is] a responding facility

Response: A clerical error occurred in the RMP submittal. As reflected in the enclosed documentation, the company corrected the clerical error on January 31, 2017, in RMP*eSubmit and certified the same on February 7, 2017. Please see the enclosed documentation at MGP-EPA004250 to MGP-EPA004251, MGP-EPA004252, and MGP-EPA004253 to MGP-EPA004263.

EPA Preliminary Finding #9: CERCLA reporting in Emergency Response Plan unclear + 10/21/2017

Response: The company is revising the reporting information in its Emergency Response Plan to make the plan easier to follow, even though the former plan had the necessary information. A copy of the information being added is enclosed, bates numbered MGP-EPA004264 to MGP-EPA004265.

The company believes it satisfied its CERCLA release reporting requirements and exercised reasonable diligence under the circumstances involved. EPA cannot dispute that the company did not have "actual knowledge" of a reportable quantity "RQ" exceedance. As noted previously to the agency in the company's January 17, 2017, response to the Chemical Release Questionnaire, the company did not know how much sulfuric acid from the Harcros Trailer was pumped by Harcros into the sodium hypochlorite tank until December 20, 2016, when Harcros finally provided a post-incident scale ticket to the company. Rather than waiting for days or weeks to confirm with actual knowledge that an RQ exceedance had occurred, the company made the decision to proactively report. Another reason the company proactively notified regulatory agencies relates to the fact that understanding the chemical reaction and the quantity and type of substances potentially generated is not simple and straight-forward.

Add to this the complexity of actually extrapolating potential amounts that were released "into the environment" or beyond the "boundary of the facility" as required by the release reporting notification obligations under applicable law.

There is no obligation to report prior to acquiring knowledge of the release of an RQ. Stated otherwise, one cannot report that which one does not know. EPA's release reporting provisions:

- do not impose the reporting requirement immediately after a release begins;
- do not impose the reporting requirement immediately after the owner or operator would have known of a release had the owner or operator used monitoring equipment or techniques deemed adequate by EPA;
- do not impose the reporting requirement immediately after the owner or operator learns of a release; and
- do not impose the reporting requirement immediately after a release reaches a level at or above an RQ.

Simply put, the regulation imposes a reporting requirement immediately after a release reaches a level at or above an RQ **and** the owner or operator **has knowledge** that it has done so. In the absence of actual knowledge, the company did what it was required to do to investigate whether an RQ occurred and did not wait until it had absolute certainty that an RQ had been exceeded. Rather, the company exercised reasonable diligence in concluding the existence of a potential RQ event and notifying the NRC and other authorities.

If EPA believes that a citation is appropriate, the company would like to meet with EPA and understand better the agency's position.

EPA Preliminary Finding #10: CERCLA/EPCRA Reporting 7/24/2016

Response: The company is undertaking an evaluation whether an RQ event actually occurred on this day. EPA's preliminary finding is based upon information in the company's internal incident report that indicates "a spill of approximately 200 gallons of 12% sodium hypochlorite at Modified B." The incident report also states that the operator on duty "sprayed approximately 200 gallons of water on the sodium hypochlorite. . . ." See MGP-EPA000489. The company is working to identify whether the reference to a spill of 200 gallons was perhaps mistakenly identified in the report as a result of the operator spraying approximately 200 gallons of water and imprecise references in the incident report. The incident report also does not identify how much sodium hypochlorite remained in the rain water collection pit and how much may have been released into the environment.

EPA Preliminary Finding #11: CAA Section 112(r)(1) Failing to maintain a safe facility by not implementing an operating procedure leading to an incident with injury and off-site impact.

Response: The company does not believe it violated Clean Air Act Section 112(r)(1) and does not agree with the agency's preliminary finding that it failed to maintain a safe facility by not implementing an operating procedure leading to an incident with injury and off-site impact.

As discussed with EPA during the inspection, the company had clear language in its Standard Operating Procedure for the Sulfuric Acid Day Tank (PSM #014) regarding potential consequences of deviation and instructions to the company employees concerning bulk unloading and transfer procedures to prevent such an incident. Further, the company operator directly interfacing with the Harcros HazMat driver had been trained on the Standard Operating Procedure and had conducted annual review and verification of the applicable SOP as recently as June 28, 2016, as well as in years prior. Consequently, the company's SOPs, training programs, management of change program, incident investigation program, and preventative maintenance programs, all demonstrate that the company maintained a safe facility in satisfaction of its general duty under the Clean Air Act.

Bulk chemical unloading operations involve a shared responsibility as between a chemical distributor and a fixed facility to verify that transfer equipment is properly connected. In connection with this shared responsibility, Harcros had a number of responsibilities which it did not fulfill. While not an exhaustive list, these obligations include Harcros' responsibility to ensure the delivery vehicle was attended by a qualified person at all times with an unobstructed view of the tank and the delivery hose. Harcros also failed to engage either emergency shut-off device or close the valve allowing the contents of the delivery trailer to continue to unload. And, of course, Harcros also failed to observe the directions provided by the MGPI employee regarding the proper port and the driver also turned the value to allow the flow of product into the tank. MGPI has not yet been afforded the opportunity to interview the Harcros driver to understand why the driver incorrectly removed the cap to the sodium hypochlorite line, particularly when this same driver had made numerous prior deliveries of sulfuric acid to the tank farm. In this regard, MGPI has not yet been able to obtain any information concerning the type and level of the driver's training, including specialized training on the operation of emergency control features on the Harcros trailer.

If EPA still believes that MGPI did not implement operating procedures which led to this incident as initially indicated by the agency during the inspection, the company would like to meet with EPA and understand the agency's rationale regarding the factual and legal bases for such position in light of the circumstances involved, including the acts and omissions by Harcros.

Please let me know if you have any questions.

Sincerely,

Andrew Brought

Enclosures

cc: Munim Hussain, MGP Ingredients, Inc. (munim.hussain@mgpingredients.com)